GOLDIE SKODRAS

IBLA 83-237 Decided April 14, 1983

Appeal from a decision of the Nevada State Office, Bureau of Land Management, denying reinstatement of oil and gas lease N 33295 terminated by operation of law for failure to timely pay the advance rental.

Affirmed.

1. Oil and Gas Leases: Generally--Rules of Practice: Appeals: Generally--Rules of Practice: Appeals: Effect of--Rules of Practice: Protests

A protest to issuance of an oil and gas lease filed after the lease has issued is not timely. Where, however, the "protest" is filed by an individual with subsidiary priority such protest shall be deemed to be an appeal from the rejection of the protestant's application or offer to lease.

2. Oil and Gas Leases: Applications: Generally--Rules of Practice: Appeals: Effect of

The filing of an appeal from rejection of a lease offer or application preserves the viability of the offer or application during the pendancy of the appeal. Thus, where it is shown that the lease improperly issued to another party, the lease is properly canceled and may be awarded to the appellant.

3. Oil and Gas Leases: Reinstatement

Where the lessee of an oil and gas lease terminated for nonpayment of annual rentals fails to show that the failure to timely pay the rentals was not due to a lack of reasonable diligence or that the failure to exercise reasonable diligence was justifiable, a petition to

reinstate the lease under 30 U.S.C. § 188(c) (1976) is properly denied.

APPEARANCES: Stephen F. Pellino, Esq., Ridgefield, New Jersey, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Goldie Skodras has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), refusing to reinstate oil and gas lease N 33295, which had terminated by operation of law for failure to pay the rental on or before the anniversary date of the lease. In order to understand the contentions of the appellant, it will be necessary to describe briefly the background of this lease.

Appellant's drawing entry card (DEC) was drawn with first priority for parcel NV-51 in the May 1981 simultaneous oil and gas lease drawing in Nevada. Pursuant to her application to lease, the Nevada State Office sent appellant a lease offer form, which she signed on June 10, 1981. Appellant's lease offer was signed by the Acting Chief, Branch of Land and Minerals Operation, on June 30, 1981, thereby issuing the lease. See 43 CFR 3112.4-2. The lease was issued with an effective date of July 1, 1981, pursuant to 43 CFR 3110.1-2.

On July 7, 1981, one Marilyn Watson, whose DEC had been drawn with second priority for the same parcel, filed a protest with the Nevada State Office, contending that the appellant, herein, had not disclosed the nature of her agreement with "Metropolitan Marketing," a filing service. On August 27, 1981, the State office denied Watson's protest merely noting that "according to the records of this office, the simultaneous oil and gas lease application card filed by Goldie Skodras was properly completed, signed and filed." Marilyn Watson timely took an appeal to this Board.

In a decision styled Marilyn S. Watson, 67 IBLA 67 (1982), this Board noted that while no documents had been placed in case file N 33295 which evidenced compliance with the agency disclosure requirements, Skodras had, in fact, complied with 43 CFR 3102.2-6(b) (1981). We noted that the absence of any cross-referencing in the specific case file to the file in which the disclosure documents were kept had misled Watson into assuming they had not been filed. Moreover, we pointed out to the State office that this initial omission was compounded by the uninformative nature of its protest denial. Id. at 70. Since Skodras had fully complied with the disclosure requirement, however, we affirmed the rejection of Watson's protest.

The Board's decision issued on September 10, 1982. The lease, however, had issued with an effective date of July 1, 1981. Thus, another years' annual rental was due on July 1, 1982. The State office sent appellant a courtesy notice of the rental due at her address of record. Apparently she was not there, and the notice was forwarded to her. 1/ Payment

1/ In her petition for reinstatement, appellant stated, "The second year's rental notice was forwarded to the petitioner and payment was transmitted on July 14, 1982, and received by the Nevada State Office on July 19, 1982."

was postmarked on July 14, 1982, and was received on July 19, 1982. BLM then transmitted to appellant a notice of termination advising her of her right to file for reinstatement of the lease, as provided by 30 U.S.C. § 188(c) (1976). A petition for reinstatement was duly filed.

BLM withheld adjudication of the petition until the Board had issued its decision in Marilyn Watson, supra, and the case file had been returned to the State office. BLM denied the petition for reinstatement on October 29, 1982. In her petition, appellant had argued that, due to the Watson protest, she had been unable to assign her lease. She further averred that she was unaware of the fact that she was required to pay the second year's rental "irrespective of any pending appeals," and that when, after inquiry, she was informed that such rentals were required, she promptly made said payment.

By decision of October 29, 1982, the State office denied reinstatement of the lease. The decision, noting that ignorance of the law is not adequate justification for late payment, stated, "Inquiry by you should have been made sufficiently in advance of the due date to be able to make the payment on time." An appeal from this decision was timely filed.

On appeal, appellant, through her attorney, argues that there was to requirement to tender the rentals because none were due. Thus, appellant argues that issuance of the lease was stayed by the filing of a protest under 43 CFR 4.21(a), and therefore no lease actually issued. This analysis, however, is fatally flawed.

[1] The regulations expressly provide that "the signature of the authorized officer on the lease shall constitute the acceptance of the lease offer and issuance of the lease by the United States." 43 CFR 3112.4-2. The lease was signed by the authorized officer on June 30, 1981, thereby issuing the lease. Appellant received a copy of the lease on July 6, 1981, the day before Watson's "protest" was filed, as evidenced by her signature on the postal return receipt card.

The Watson "protest" was not filed until July 7, 1981. While this submission was styled as a "protest," technically it was not. A protest is an objection "to any action proposed to be taken." 43 CFR 4.450-2 (emphasis supplied). Inasmuch as the lease had already issued, a protest was not proper.

Watson, however, did have standing to appeal from the rejection of her application. The regulations provide that "when the lease is issued to the first-qualified applicant, unsuccessful applicants selected with lower priority for the lease shall be notified in writing or by return of their application." 43 CFR 3112.3-1(e). Rejection of an application clearly gives the applicant standing to appeal. 43 CFR 4.410. Thus, while styled a "protest," BLM should have treated the Watson "protest" as an appeal. See Duncan Miller (On Reconsideration), 39 IBLA 312 (1979). 2/

2/ In this regard, our prior decision in Marilyn S. Watson, supra, did not correctly explicate this point.

[2] It is true that a timely protest would have stayed lease issuance. See James W. Smith, 44 IBLA 275 (1979). The protest, however, was not timely filed. While the filing of a notice of appeal likewise suspends the effect of the decision being appealed, the actual decision being appealed was rejection of Watson's application, not issuance of the lease. This is a crucial distinction.

By appealing the rejection of her application, the Watson application remained viable. Thus, had the Board ordered cancellation of the lease because the Skodras application had been defective, Watson could have received the lease. In contradistinction, since the third-priority applicant did not appeal the rejection of his application, had both the Skodras and Watson applications been found defective, the lease would have been canceled, but the third-priority applicant would not obtain it. Rather, it would be reposted on a new simultaneous listing. 3/

Therefore, while the Watson appeal did serve to preserve her application, it had no effect on the issuance of the lease or the running of its term. We recognize, of course, that the filing of the Watson appeal made assignment of the lease virtually impossible, since no one could acquire bona fide purchaser status until the Watson appeal was decided. However, the regulations provide a relief mechanism for lessees involved in proceedings which might result in cancellation of a lease. Thus, the regulations provide:

> If during any such proceeding a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her interest thereto, or if such rights are suspended by order of the Secretary of the Interior pending a decision, payment of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

43 CFR 3108.3(e). No suspension was entered, nor was a waiver filed. Thus, both the term and the rental requirements continued. Appellant's contention that no rental was due on the anniversary date of the lease is rejected.

[3] Insofar as appellant's petition for reinstatement is concerned, it is clear that due diligence was not shown, as the rental payment was not posted until after the anniversary date. See, e.g., Ruth Eloise Brown, 60 IBLA 328 (1981); James E. Kordosky, 43 IBLA 62 (1979). A lease can still be reinstated under 30 U.S.C. § 188(c) (1976), even where due diligence has not been

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3/ The State office listed Marilyn Watson as an adverse party to this appeal. This was in error. All rights in her application had been fully adjudicated by this Board in Marilyn S. Watson, supra, and, in the absence of a timely appeal to Federal courts, she no longer had any cognizable claim to lease N 33295.

exercised, if the lessee can show that the failure to exercise due diligence was justifiable, i.e., occasioned by events outside of the lessee's control. We agree with the State office that appellant's contentions do not show a justifiable basis for failure to exercise due diligence. BLM correctly rejected appellant's petition under 30 U.S.C. § 188(c) (1976).

We do note, however, that on January 12, 1983, Congress enacted the Federal Oil and Gas Royalty Management Act of 1982, 96 Stat. 2447, which amended section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to provide an additional opportunity for reinstatement where the provisions of section 188(c) do not permit reinstatement. While the new Act imposes various time limits, no implementing regulations have yet been promulgated. Therefore, if appellant is desirous of availing herself of the benefits of this Act, she should inquire promptly at the Nevada State Office.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge.